

August 2006

MJI Publications Updates

Adoption Proceedings Benchbook

Crime Victim Rights Manual (Revised Edition)

Criminal Procedure Monograph 2—Issuance of Search Warrants (Third Edition)

Criminal Procedure Monograph 5—Preliminary Examinations (Third Edition)

Criminal Procedure Monograph 6—Pretrial Motions (Third Edition)

Criminal Procedure Monograph 8—Felony Sentencing

Domestic Violence Benchbook (3rd ed)

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Sexual Assault Benchbook

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Traffic Benchbook—Third Edition, Volume 2

Traffic Benchbook—Third Edition, Volume 3

Update: Adoption Proceedings Benchbook

CHAPTER 3

Identifying the Father

3.7 Acknowledgment of Parentage

B. Effect of Acknowledgment

Insert the following text after the November 2003 update to page 95:

An acknowledgment of parentage indicating that a man is the biological father of a child born while the mother was married to another man does not override the presumption that the child is a legitimate issue of the mother's marriage. *Barnes v Jeudevine*, ___ Mich ___, ___ (2006).

In *Barnes*, at the time the subject child was conceived, the defendant-mother (Jeudevine) was married. *Barnes, supra* at ___. Jeudevine did not inform her husband of the pregnancy. *Id.* at ___. Shortly thereafter, Jeudevine's husband, still unaware that Jeudevine was pregnant, filed for divorce. *Id.* at ___. Jeudevine did not respond to the complaint for divorce and did not appear at the divorce hearing. *Id.* at ___. The court entered a default judgment of divorce. Four months after the divorce was final, Jeudevine gave birth to the subject child and identified the plaintiff (Barnes) as the child's father on the child's birth certificate and on an affidavit of parentage signed by both Jeudevine and Barnes. *Id.* at ___. Before ending their relationship, Jeudevine and Barnes lived together and raised the child for more than four years. After their relationship ended, Barnes filed a paternity action against Jeudevine alleging that he was the father of the subject child. *Id.* at ___. The trial court granted summary disposition in Jeudevine's favor, and the Court of Appeals reversed this ruling.

The Michigan Supreme Court reversed and remanded the case for entry of an order of summary disposition in Jeudevine's favor. *Barnes, supra* at ___. In making its ruling, the Court noted that the affidavit of parentage alone was insufficient to give the plaintiff standing to bring an action under MCL 722.711(a) of the Paternity Act. *Id.* at ___. The Court explained:

“It was acknowledged in the affidavit of parentage and in the birth certificate that plaintiff was the biological father of the child. Yet, despite these documents, the child is still presumed to be a legitimate issue of the marriage. An affidavit of parentage is a stipulation by a woman of a man’s paternity under the Acknowledgment of Parentage Act, MCL 722.1001 *et seq.* This is not a court determination that the child was born out of wedlock, as is required under either the Paternity Act or the Acknowledgment of Parentage Act. Both acts provide that a child is born out of wedlock only when (1) the woman was not married at the time of the conception and birth, or (2) a court previously determined that the child was not an issue of the marriage. Further, a birth certificate is also not a court determination that the child was not an issue of the marriage. For these reasons, the affidavit of parentage and the birth certificate do not rebut the presumption that the child was an issue of defendant’s marriage” *Barnes, supra* at ____.

CHAPTER 3

Identifying the Father

3.8 The Paternity Act

B. A Child That the “Court Has Determined to Be a Child Born or Conceived During a Marriage but Not the Issue of That Marriage”

Insert the following case summary before the first bullet at the top of page 103:

♦ *Barnes v Jeudevine*, ___ Mich ___ (2006)

“[A] court determination under [the Paternity Act] that a child is not ‘the issue of the marriage’ requires that there be an affirmative finding regarding the child’s paternity in a prior legal proceeding that settled the controversy between the mother and the legal father.” *Barnes v Jeudevine*, ___ Mich ___, ___ (2006). Therefore, a judgment of divorce in which the circuit court fails to make an affirmative finding that the subject child was not the issue of the marriage is insufficient to give a putative father standing to bring an action under MCL 722.711(a) of the Paternity Act. *Barnes*, *supra* at ___.

In *Barnes*, at the time the subject child was conceived, the defendant-mother (Jeudevine) was married. *Barnes*, *supra* at ___. Jeudevine did not inform her husband of the pregnancy. *Id.* at ___. Shortly thereafter, Jeudevine’s husband, still unaware that Jeudevine was pregnant, filed for divorce. *Id.* at ___. Jeudevine did not respond to the complaint for divorce and did not appear at the divorce hearing. *Id.* at ___. The court entered a default judgment of divorce that stated:

“[I]t satisfactorily appears to this Court that there has been a breakdown in the marriage relationship to the extent that the objects of matrimony have been destroyed, and there remains no reasonable likelihood that the marriage can be preserved; it further appearing that no children were born of this marriage and none are expected.” *Id.* at ___.

Four months after the divorce was final, Jeudevine gave birth to the subject child and identified the plaintiff (Barnes) as the child’s father on the child’s birth certificate and on an affidavit of parentage signed by both Jeudevine and Barnes. *Barnes*, *supra* at ___. Before ending their relationship, Jeudevine and Barnes lived together and raised the child for more than four years. After their relationship ended, Barnes filed a paternity action against Jeudevine alleging that he was the father of the subject child. *Id.* at ___. After a hearing, the trial court granted summary judgment in favor of Jeudevine, concluding that

Barnes did not have standing to sue under the Paternity Act because there was no prior court determination that the subject child was a child born or conceived during the marriage but not the issue of the marriage. *Id.* at _____. The Court of Appeals reversed, finding that Barnes had standing to bring his action under the Paternity Act because “the statement in the default judgment of divorce that ‘no children were born of this marriage and none are expected’ was a determination by a court that the child was not an issue of the marriage.” *Id.* at _____.

The Michigan Supreme Court reversed and remanded the case for entry of an order of summary disposition in Jeudevine’s favor. *Barnes, supra* at _____. In disposing of the case, the Court first noted that because Jeudevine was married to another man when the subject child was conceived, it was necessary for Barnes to establish that a court had determined that the child was not an issue of the marriage. *Id.* at _____. The Court explained:

“In this case, the subject child is presumed to be the issue of the marriage because the child was conceived during the marriage. The presumption remains until rebutted by clear and convincing evidence to the contrary. Consequently, the party wishing to overcome the presumption must present evidence that the child, despite the date of its conception, is not the issue of the marriage and a court must so hold. The circuit court’s statement in the judgment of divorce that it appeared that there would be no children does not rebut that presumption. Further, the legal father, [Jeudevine’s husband at the time of conception], never renounced the presumption of legitimacy. Because the child was not conceived outside of marriage, and because there is no prior court determination that the child is not an issue of the marriage, we hold that plaintiff does not have standing under the Paternity Act.” *Id.* at _____.

CHAPTER 3

Identifying the Father

3.8 The Paternity Act

C. Who May Bring a Paternity Action

2. Father

Add the following text to the text accompanying the first bullet (*Girard v Wagenmaker*), near the top of page 105:

But see *Barnes v Jeudevine*, ___ Mich ___, ___ (2006), where a judgment of divorce in which the circuit court failed to make an affirmative finding that the subject child was not the issue of the marriage was insufficient to give a putative father standing to bring an action under the Paternity Act.

CHAPTER 5

Temporary Placements, Investigation Reports, and the Safe Delivery of Newborns

5.6 Safe Delivery of Newborns Law

B. Responsibilities of the Hospital

1. Mandatory Report of Child Abuse Not Required

Effective July 6, 2006, 2006 PA 264 amended MCL 722.623 to revise the list of individuals who are required to report suspected child abuse or neglect. Replace the paragraph starting at the bottom of page 175 and continuing at the top of page 176 with the following text:

*Formerly the FIA. See MCL 400.226.

MCL 722.623 mandates that if the following individuals have reasonable cause to suspect child abuse or neglect they must report the abuse or neglect to the Department of Human Services*: a physician, dentist, physician's assistant, registered dental hygienist, medical examiner, nurse, person licensed to provide emergency medical care, audiologist, psychologist, marriage and family therapist, licensed professional counselor, social worker, licensed master's social worker, licensed bachelor's social worker, registered social service technician, social service technician, school administrator, school counselor or teacher, law enforcement officer, member of the clergy, or regulated child care provider.

Update: Crime Victim Rights Manual (Revised Edition)

CHAPTER 4

Protection From Revictimization

4.10 Revocation of Release Under the Crime Victim's Rights Act (CVRA)

Effective July 20, 2006, 2006 PA 316 amended MCL 791.240a to require revocation of a sex offender's parole under certain circumstances. Insert the following text on page 62 after the first sentence of the first paragraph in this section:

If an offender required to register under the Sex Offenders Registration Act willfully violates the Act, the parole board must revoke the offender's parole. MCL 791.240a(2).

CHAPTER 5

Victim Privacy

5.7 Defense Discovery of Privileged Communications or Confidential Records

A. Privileged Communications

10. Abrogation of Privileges in Civil Child Abuse or Neglect Proceedings

Effective July 6, 2006, 2006 PA 264 amended MCL 722.623 to further specify what members of the social work and social service professions are required to report suspected child abuse or neglect. Therefore, replace the bulleted list on page 95 with the following:

- physicians;
- physician's assistants;
- dentists;
- registered dental hygienists;
- medical examiners;
- nurses;
- persons licensed to provide emergency medical care;
- audiologists;
- psychologists;
- marriage and family therapists;
- licensed professional counselors;
- social workers;
- licensed master's social workers;
- licensed bachelor's social workers;
- registered social service technicians;
- social service technicians;
- school administrators;
- school counselors or teachers;

- law enforcement officers;
- members of the clergy; and
- regulated child care providers.

August 2006

Update: Criminal Procedure Monograph 2—Issuance of Search Warrants (Third Edition)

Part A—Commentary

2.14 Other Exceptions Applicable to Search Warrants

H.* Status of the Person Searched

Insert the following text after the July 2006 update to page 35:

See also *United States v Conley*, ___ F3d ___, ___ (CA 6, 2006), where the Sixth Circuit ruled that ordering a probationer—even a probationer convicted of a “white collar” crime—to submit a DNA sample did not require individualized suspicion and did not violate the prohibition against unreasonable searches. According to the Court:

“In view of [the defendant]’s sharply reduced expectation of privacy, and the minimal intrusion required in taking a blood sample for DNA analysis for identification purposes only, the government’s interest in the proper identification of convicted felons outweighs [the defendant’s] privacy interest. Under a totality of the circumstances analysis, the search is reasonable, and does not violate the Fourth Amendment.” *Conley, supra* at ___.

*Subsection (H) was added by the July 2006 update to page 35.

August 2006

Update: Criminal Procedure Monograph 5—Preliminary Examinations (Third Edition)

Part A—Commentary

5.11 Right to Counsel at Preliminary Examinations

Insert the following text after the **Note** on page 19:

Where a defendant who does not require appointed counsel is wrongly denied his or her Sixth Amendment right to counsel of choice, the constitutional violation is complete and the defendant's conviction must be reversed. *United States v Gonzalez-Lopez*, 548 US ___, ___ (2006). Violation of a defendant's constitutional right to counsel of choice is a structural error not subject to harmless-error analysis. *Id.* at ___.

August 2006

Update: Criminal Procedure Monograph 6—Pretrial Motions (Third Edition)

Part 2—Individual Motions

6.21 Motion to Compel Discovery

4. Other Provisions of MCR 6.201

By order issued June 29, 2006, the Michigan Court of Appeals vacated its first opinion in *People v Greenfield* (discussed in the June 2006 update to page 51) and issued an opinion identical to the first with the exception of footnote six (discussed below). In the June 2006 update to page 51, change the case citation to *People v Greenfield (On Reconsideration)*, ___ Mich App ___ (2006), and insert the following language after the existing text:

Note: By order issued June 29, 2006, the Michigan Court of Appeals vacated its first opinion in *People v Greenfield* and issued an opinion identical to the first with the exception of footnote six. In footnote six of its reissued opinion, the Court expressly recognized that MCR 6.201 applies only to felony crimes. Footnote six as it appears in the second *Greenfield* opinion reads as follows (added language appears in bold):

“MCR 6.201 applies to discovery in both the district and circuit courts of this state. See *People v Sheldon*, 234 Mich App 68, 70–71; 592 NW2d 121 (1999); *People v Pruitt*, 229 Mich App 82, 87–88; 580 NW2d 462 (1998). **We recognize that, in Administrative Order 1999-3, our Supreme Court made clear that, contrary to a statement in *Sheldon*, *supra*, MCR 6.201 applies only to criminal felony cases. While, as a multiple offender, defendant Greenfield was clearly charged with a felony in this case, we reiterate for the bench and bar that MCR 6.201 does not apply to misdemeanor cases.**” *People v Greenfield (On Reconsideration)*, ___ Mich App ___, ___ n 6 (2006).

Part 2—Individual Motions

6.37 Motion to Suppress Evidence Seized Without a Search Warrant

Discussion

Insert the following text after the July 2006 update to page 100:

See also *United States v Conley*, ___ F3d ___, ___ (CA 6, 2006), where the Sixth Circuit ruled that ordering a probationer—even a probationer convicted of a “white collar” crime—to submit a DNA sample did not require individualized suspicion and did not violate the prohibition against unreasonable searches. According to the Court:

“In view of [the defendant]’s sharply reduced expectation of privacy, and the minimal intrusion required in taking a blood sample for DNA analysis for identification purposes only, the government’s interest in the proper identification of convicted felons outweighs [the defendant’s] privacy interest. Under a totality of the circumstances analysis, the search is reasonable, and does not violate the Fourth Amendment.” *Conley, supra* at ___.

Update: Criminal Procedure Monograph 8—Felony Sentencing

Part II—Scoring the Statutory Sentencing Guidelines

8.6 Scoring an Offender’s Offense Variables (OVs)

J. OV 9—Number of Victims

2. Case Law Under the Statutory Guidelines

The conflict resolution panel, convened to determine the proper interpretation and application of OV 9, overruled the conclusion in *People v Knowles*, 256 Mich App 53 (2003), and confirmed the reasoning in *People v Melton (Melton I)*, 269 Mich App 542 (2006), in which the Court disagreed with, but was bound by, the outcome in *Knowles*. *People v Melton (Melton II)*, ___ Mich App ___ (2006). Delete the February 2006 and March 2006 updates to page 58, and replace the third paragraph on page 58 with the following text:

An individual is a “victim” for purposes of OV 9 when a defendant’s conduct places the individual in danger of *physical* injury or loss of life; an individual who suffers financial injury, or a type of injury other than physical, is not a “victim” for purposes of scoring OV 9. *People v Melton (Melton II)*, ___ Mich App ___, ___ (2006) (overruling the outcome in previous cases* where an individual and an institution suffered financial injury and were counted as victims under OV 9). The *Melton II* Court explained:

“The Legislature did not explicitly restrict types of injuries by inserting the word ‘physical’ anywhere in the statute. It is therefore superficially logical to conclude that no such restriction was intended, in which case OV 9 could be scored for financial injuries.

“However, such an interpretation would also result in a conclusion that OV 9 should be scored for *any* sort of injury. We note there is no direction to score ‘financial’ injuries. Nor is there a direction to include ‘psychological’ injuries or, perhaps, ‘social’ injuries. Indeed, there is a veritable cornucopia of possible types of injuries

**People v Knowles*, 256 Mich App 53 (2003), and *People v Dewald*, 267 Mich App 365 (2005).

one could conceivably suffer as a result of a criminal act. Concluding that OV 9 is not limited to physical injuries effectively mandates that a trial court score points whenever a purported victim is placed in danger of *anything* that could be considered harmful, whether to the victim's person, pocketbook, reputation, self-esteem, or dignity.

“We do not believe the Legislature intended such an open-ended application, especially when the word ‘injury’ is viewed in the context of the rest of the statute. Our Supreme Court has explained that, in the absence of a clear indication that the Legislature intended us to do otherwise, this Court must examine the language of a statute in its grammatical and structural context. *People v Gillis*, 474 Mich 105, 114–115; 712 NW2d 419 (2006). The remainder of the statute clearly indicates that only physical injuries were contemplated.

“Under MCL 777.39(2)(a), scoring should ‘Count each person who was placed in danger of injury or loss of life as a victim.’ The statute further directs that the maximum number of points should be scored only in homicide cases where ‘Multiple deaths occurred.’ The only kind of ‘injury’ that can plausibly be juxtapositioned with ‘loss of life’ is physical injury to one’s person. We cannot conclude that the Legislature intended to categorize financial loss with the gravamen of physical injury and death.” *Melton II*, *supra* at ____ (emphasis in original).

Part III—Recommended Minimum Sentences for Offenders Not Sentenced as Habitual Offenders

8.9 Felony Offenses Enumerated in MCL 777.18 (Offenses Predicated on an Underlying Felony)

A. Controlled Substance Violations Involving Minors or Near School Property—MCL 333.7410

Effective June 26, 2006, 2006 PA 216 amended MCL 333.7410(4) to include the phrase “or within 1,000 feet of school property” that appears in similar provisions of the same statute. Therefore, replace the paragraph beginning with “**Possession of GBL or other controlled substance...**” near the top of page 88 with the following text:

Possession of GBL or other controlled substance on or within 1,000 feet of school property. MCL 333.7410(4) provides the penalty for persons aged 18 years of age or older who violate MCL 333.7401b or 333.7403(2)(a)(v), (b), (c), or (d), by possessing GBL or a controlled substance on or within 1,000 feet of school property. An offender convicted of violating MCL 333.7410(4) is subject to:

Part IX—Sentence Departures

8.51 Exceptions: When a Departure Is Not a Departure

Delete the April 2006 update to page 209 and insert the following text:

**People v Buehler* (*Buehler I*), 268 Mich App 475 (2005), vacated 474 Mich 1081 (2006) (*Buehler II*).

When probation is an authorized alternative to imprisonment. In *People v Buehler* (*On Remand*) (*Buehler III*), ___ Mich App ___, ___ (2006), the Court of Appeals determined that the legislative sentencing guidelines would apply to any sentence of imprisonment imposed on the defendant for his conviction of indecent exposure as a sexually delinquent person. The Court further found that under the statutory sentencing guidelines the trial court’s sentence of probation would represent a departure for which the court failed to articulate substantial and compelling reasons. However, noting that amendments to MCL 750.335a effective after the Court released its first opinion in this case,* might result in a different outcome for crimes occurring after the amendment’s effective date, the Court concluded that MCL 750.335a as it appeared at the time the instant offense was committed controlled its review of the case. Because MCL 750.335a, before it was amended, permitted a court to exercise its discretion and impose a sentence of probation rather than imprisonment, the *Buehler III* Court affirmed its previous ruling that probation was an appropriate penalty for the defendant’s conviction. (A more detailed discussion of the case’s history appears below.)

Note: 2005 PA 300’s amendment to MCL 750.335a may have eliminated a sentencing court’s discretion with regard to the penalty imposed for conviction of MCL 750.335a(1). See MCL 750.335a(2)(c). This issue has not yet been addressed.

In *People v Buehler* (*Buehler II*), 474 Mich 1081 (2006), the Supreme Court remanded the case to the Court of Appeals to consider whether the trial court’s admitted departure (sentencing the defendant to probation rather than prison) was properly justified by substantial and compelling reasons and “whether any term of imprisonment that may be imposed by the circuit court is controlled by the legislative sentencing guidelines or by the indeterminate sentence prescribed by MCL 750.335a.” *Buehler II*, *supra* at ____.

Using the rules of statutory construction, the *Buehler III* Court concluded that the legislative guidelines applied to any sentence of imprisonment imposed on the defendant because the applicable guidelines statute, MCL 777.16q, was more recently enacted than was the more specific statute, MCL 750.335a. *Buehler III*, *supra* at _____. According to the Court:

“It is a well-settled tenet of statutory construction that when a conflict exists between two statutes, the one that is more specific to the subject matter generally controls. *In re Brown*, 229 Mich App 496, 501; 582 NW2d 530 (1998). However, it is equally well settled that among statutes that are *pari materia*, the more recently

enacted law is favored. *People v Ellis*, 224 Mich App 752, 756; 569 NW2d 917 (1997). The rules of statutory construction also provide that inconsistencies in statutes should be reconciled whenever possible. *People v Budnick*, 197 Mich App 21, 24; 494 NW2d 778 (1992).

“Applying these rules to the instant case so as to reconcile the statutes at issue as nearly as possible, we find that even though MCL 750.335a is more specific with respect to the term of imprisonment that may be imposed for a conviction of indecent exposure as a sexually delinquent person, the intent of the Legislature is best expressed in the more recently enacted sentencing guidelines, which are therefore controlling when a trial court elects to impose imprisonment for such a conviction.” *Buehler III*, *supra* at ____ (footnote omitted).

Recognizing that the prospective application of this reasoning to the two statutes as they currently read might result in a different outcome—MCL 750.335a, amended effective February 1, 2006, is more recently enacted than MCL 777.16q—the *Buehler III* Court expressed no opinion about whether the guidelines statute or the statute specific to the offense would apply to future convictions under MCL 750.335a(2). *Buehler III*, *supra* at ____ n 4.

With regard to the conviction at issue in the instant case, MCL 750.335a (at the time the Court first decided this case), specified the term of imprisonment to be imposed for a conviction *if* the court sentenced a defendant to a term of imprisonment. Because the *Buehler I* Court concluded that probation was a proper alternative to imprisonment, the Court did not address the applicability of MCL 777.16q, nor did it address the sentencing court’s departure from the recommended sentence under the guidelines. As directed by the Supreme Court, however, the *Buehler III* Court considered the departure issue and found that the trial court’s reasons for imposing a sentence of probation, rather than the penalty recommended under applicable sentencing guidelines, were not objective and verifiable as required by MCL 769.34(2) and *People v Babcock*, 469 Mich 247, 257–258 (2003). Specifically, the *Buehler III* Court stated:

“[W]e find that the trial court’s stated reasons for sentencing defendant to probation—that defendant was maintaining his sobriety and, in the court’s opinion, possessed the ability to control his conduct when he was not drinking—are not objective and verifiable. Indeed, whether defendant possesses the ability to control his conduct when not drinking is a subjective determination not external to the minds of the judge, defendant, or others involved in the sentencing decision.” *Buehler III*, *supra* at ____.

Because the *Buehler III* Court decided that this case was governed by the version of MCL 750.335a that gave the sentencing court discretion over

whether to sentence the defendant to a term of imprisonment, and because the general probation statute, MCL 767.61a, did not exempt MCL 750.335a from its scope, the *Buehler III* Court reaffirmed the conclusion in *Buehler I* that a sentence of probation under MCL 767.61a was a permissible alternative to the sentence of imprisonment recommended by the sentencing guidelines. Said the *Buehler III* Court:

“Having resolved the questions addressed to us, we nonetheless reaffirm the trial court’s imposition of a probationary sentence for the reasons stated in our prior opinion, which we observe was vacated by our Supreme Court rather than overruled. We do so because we conclude that resolution of these two questions does not call into question our prior analysis of whether defendant’s probationary sentence was a lawful alternative to a prison sentence under the version of MCL 750.335a in effect at the time defendant committed the instant offense.” *Buehler III, supra* at ____.

Update: Domestic Violence Benchbook (3rd ed)

CHAPTER 5

Evidence in Criminal Domestic Violence Cases

5.10 Privileged Communications with Medical or Mental Health Service Providers

G. Abrogation of Privileges in Cases Involving Suspected Child Abuse or Neglect

Effective July 6, 2006, 2006 PA 264 amended MCL 722.623 to revise the list of individuals who are required to report suspected child abuse or neglect to the Department of Human Services*. Replace the quote of MCL 722.623(1)(a) near the top of page 211 with the following text:

“A physician, dentist, physician’s assistant, registered dental hygienist, medical examiner, nurse, person licensed to provide emergency medical care, audiologist, psychologist, marriage and family therapist, licensed professional counselor, social worker, licensed master’s social worker, licensed bachelor’s social worker, registered social service technician, social service technician, school administrator, school counselor or teacher, law enforcement officer, member of the clergy, or regulated child care provider who has reasonable cause to suspect child abuse or neglect shall make immediately, by telephone or otherwise, an oral report, or cause an oral report to be made, of the suspected child abuse or neglect to the department. Within 72 hours after making the oral report, the reporting person shall file a written report as required in this act. If the reporting person is a member of the staff of a hospital, agency, or school, the reporting person shall notify the person in charge of the hospital, agency, or school of his or her finding and that the report has been made, and shall make a copy of the written report available to the person in charge. A notification to the person in charge of a hospital, agency, or school does not relieve the member of the staff of the hospital, agency, or school of the obligation of reporting to the department as required

*Formerly the FIA. See MCL 400.226.

by this section. One report from a hospital, agency, or school is adequate to meet the reporting requirement. A member of the staff of a hospital, agency, or school shall not be dismissed or otherwise penalized for making a report required by this act or for cooperating in an investigation.” MCL 722.623(1)(a).

Update: Juvenile Traffic Benchbook (Revised Edition)

CHAPTER 5

Abstracts, Expungement of Records, & Setting Aside Adjudications

5.1 Requirements for Sending Abstract of Court Record to Secretary of State

A. Time Requirements for Violations of the Motor Vehicle Code and Other Criminal Traffic Offenses

Effective July 20, 2006, 2006 PA 298 amended MCL 257.732(1)(a) to change the number of days within which a court must forward an abstract of the court record to the Secretary of State. On page 64 replace the first paragraph in this section with the following text and delete the existing cross-reference:

MCL 257.732(1)(a) requires the court, not more than five days after a conviction, bail forfeiture, civil infraction determination, or default judgment, to forward an abstract of the court record to the Secretary of State if the juvenile is found within the jurisdiction of the Family Division for violating the Motor Vehicle Code or a local ordinance substantially corresponding to a provision of the Motor Vehicle Code.

Effective July 20, 2006, 2006 PA 298 amended MCL 257.732(5) to remove language indicating the subsection's effective date. Replace the quote of MCL 257.732(5) near the middle of page 65 with the following text.

“The clerk of the court shall also forward an abstract of the court record to the secretary of state if a person has pled guilty to, or offered a plea of admission in a juvenile proceeding for, a violation of . . . MCL 436.1703, or a local ordinance substantially corresponding to that section, and has had further proceedings deferred under that section. If the person is sentenced to a term of probation and terms and conditions of probation are fulfilled and

the court discharges the individual and dismisses the proceedings, the court shall also report the dismissal to the secretary of state.” MCL 257.732(5).

Update: Michigan Circuit Court Benchbook

CHAPTER 1

General Rules Governing Court Proceedings

1.9 Discretion

Insert the following text before the last paragraph on page 20:

In *Maldonado v Ford Motor Co*, ___ Mich ___, ___ (2006), the Supreme Court adopted “as the default abuse of discretion standard” the standard articulated by the Court in *People v Babcock*, 469 Mich 247, 269 (2003). According to the *Maldonado* Court:

“[In *Babcock*, t]his Court stated that ‘an abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome.’ *Babcock, supra* at 269. The *Babcock* Court further noted that ‘[w]hen the trial court selects one of these principled outcomes, the trial court has not abused its discretion and, thus, it is proper for the reviewing court to defer to the trial court’s judgment. *Id.*’” *Maldonado, supra* at ____.

CHAPTER 2

Evidence

Part III—Witnesses, Opinions, and Expert Testimony (MRE Articles VI and VII)

2.35 Medical Malpractice—Expert Testimony

E. Specialists and the Standard of Care

Insert the following text on page 98 after the last paragraph in this subsection:

A plaintiff's expert witness's credentials need not match the defendant's expert witness's credentials in every respect. *Woodward v Custer*, ___ Mich ___, ___ (2006). According to the *Woodward* Court:

“[T]he plaintiff's expert [is only required] to match one of the defendant physician's specialties. Because the plaintiff's expert will be providing expert testimony on the appropriate or relevant standard of practice or care, not an inappropriate or irrelevant standard of practice or care, it follows that the plaintiff's expert witness must match the one most relevant standard of practice or care—the specialty engaged in by the defendant physician during the course of the alleged malpractice, and, if the defendant is board certified in that specialty, the plaintiff's expert must also be board certified in that specialty.” *Woodward, supra* at ___.

CHAPTER 3

Civil Proceedings

Part II—Pretrial Motions (MCR Subchapters 2.100 and 2.200)

3.18 Change of Venue

C. Change of Proper Venue—MCR 2.222

Insert the following text before the last sentence in the last full paragraph on page 159:

However, “a foreign plaintiff’s choice of forum is entitled to less deference than that accorded to a domestic plaintiff’s choice of forum.” *Radeljak v DaimlerChrysler Corp*, ___ Mich ___, ___ (2006) (expressly modifying the Court’s statement in *Anderson, supra**).

**Anderson v Great Lakes Dredge & Dock Co*, 411 Mich 619 (1981).

CHAPTER 3

Civil Proceedings

Part II—Pretrial Motions (MCR Subchapters 2.100 and 2.200)

3.18 Change of Venue

C. Change of Proper Venue—MCR 2.22

In *Radeljak v DaimlerChrysler Corp*, ___ Mich ___, ___ (2006), the Supreme Court reversed the Court of Appeals decision in *Robey v Ford Motor Co*, 155 Mich App 643 (1986), to the extent that *Robey* held that a court cannot decline jurisdiction unless the exercise of such jurisdiction would be seriously inconvenient. Therefore, delete the paragraph directly before sub-subsection (1) on page 160 and insert the following case summary in its place:

A trial court is not limited to dismissing a case on the basis of the forum non conveniens doctrine only when the forum is “seriously inconvenient.” *Radeljak v DaimlerChrysler Corp*, ___ Mich ___, ___ (2006).

In *Radeljak, supra*, the plaintiffs, who were residents and citizens of Croatia, were involved in a car accident in Croatia. *Radeljak, supra* at ___. The plaintiffs claimed that the accident resulted from a defect in the vehicle they were driving. Because the vehicle they were driving at the time of the accident was designed and manufactured in Michigan, the plaintiffs filed their lawsuit in the Wayne County Circuit Court. *Id.* at ___. The defendant moved for summary disposition on the basis of forum non conveniens, and the trial court granted the motion. *Id.* at ___.

Citing its ruling in *Robey v Ford Motor Co*, 155 Mich App 643 (1986), the Court of Appeals reversed the trial court’s decision because Wayne County was not a “seriously inconvenient” forum. *Radeljak, supra* at ___. In *Robey, supra*, the Court stated:

“When a party requests that a court decline jurisdiction based on the doctrine of forum non conveniens, there are two inquiries for the court to make: whether the forum is inconvenient and whether there is a more appropriate forum available. If there is not a more appropriate forum elsewhere, the inquiry ends and the court may not resist imposition of jurisdiction. If there is a more appropriate forum, the court still may not decline jurisdiction unless its own forum is seriously inconvenient.” *Robey, supra* at 645.

Noting that the “seriously inconvenient” language was not included in the test adopted in the leading Michigan case on forum non conveniens, *Cray v Gen Motors Corp*, 389 Mich 382 (1973), the Supreme Court reversed the Court of Appeals. *Radeljak, supra* at _____. The Court further stated that “imposing a ‘seriously inconvenient’ requirement is [also] inconsistent with [its] holding in *Cray, supra*, [] that it is ‘within the discretion of the trial judge to decline jurisdiction in such cases as the convenience of the parties and the ends of justice dictate.’” *Radeljak, supra* at _____.

In rejecting the “seriously inconvenient” requirement on which the Court of Appeals relied, the Supreme Court overruled *Robey, supra*, to the extent that it held otherwise. *Radeljak, supra* at _____.

CHAPTER 3

Civil Proceedings

Part II—Pretrial Motions (MCR Subchapters 2.100 and 2.200)

3.22 Dismissal

E. Involuntary Dismissal as a Sanction—MCR 2.504(B)(1)

Insert the following text after the first paragraph on page 166:

A trial court has the authority to impose appropriate sanctions—including dismissal—in order to contain and prevent abuses and ensure the orderly operation of justice. *Maldonado v Ford Motor Co*, ___ Mich ___, ___ (2006). In *Maldonado*, the plaintiff and her counsel ignored a trial court’s order suppressing “unduly prejudicial” evidence concerning the defendant’s expunged criminal record and “engaged in a concerted and wide-ranging campaign . . . to publicize the details of the inadmissible evidence through the mass media and other available means.” The trial court ultimately sanctioned the parties’ misconduct by dismissing the plaintiff’s lawsuit after having expressly warned the plaintiff and her counsel that violation of the court’s order would result in dismissal. Said the *Maldonado* Court:

“The trial court has a gate-keeping obligation, when such misconduct occurs, to impose sanctions that will not only deter the misconduct but also serve as a deterrent to other litigants.”
Maldonado, supra at ___.

CHAPTER 3

Civil Proceedings

Part VI—Post-Judgment Proceedings (MCR Subchapter 2.600)

3.57 Attorney Fees

B. Evidentiary Hearing

Add the following text on page 245 at the end of the paragraph immediately before subsection (C):

But see *Omdahl v West Iron Co Bd of Ed*, ___ Mich App ___, ___ (2006) (self-represented attorney who prevailed in a proceeding under the Open Meetings Act, MCL 15.261 *et seq.*, was entitled to attorney fees).

D. Statute Provides for Attorney Fees

Add the following text on page 245 at the end of the only paragraph in this subsection:

See also *Omdahl v West Iron Co Bd of Ed*, ___ Mich App ___, ___ (2006) (where self-represented attorney was awarded attorney fees under MCL 15.271(4) in the Open Meetings Act).

CHAPTER 3

Civil Proceedings

Part VI—Post-Judgment Proceedings (MCR Subchapter 2.600)

3.58 Sanctions

C. Dismissal

Insert the following text on page 247 before the last phrase in the first paragraph of this subsection:

See also *Maldonado v Ford Motor Co*, ___ Mich ___, ___ (2006) (trial court dismissed plaintiff's lawsuit as a sanction for violating a court order where there was a substantial likelihood that the plaintiff's misconduct would have materially prejudiced the proceedings).

CHAPTER 4

Criminal Proceedings

Part I—Preliminary Proceedings (MCR Subchapters 6.000 and 6.100)

4.4 Attorneys—Right to Counsel—Substitute Counsel

A. Right to Counsel

Insert the following text after the first paragraph on page 278:

Where a defendant who does not require appointed counsel is wrongly denied his or her Sixth Amendment right to counsel of choice, the constitutional violation is complete and the defendant's conviction must be reversed; the defendant need not show that he or she was denied a fair trial or that his or her actual counsel was ineffective. *United States v Gonzalez-Lopez*, 548 US ___, ___ (2006). Said the Court:

“Where the right to be assisted by counsel of one's choice is wrongly denied, . . . it is unnecessary to conduct an ineffectiveness or prejudice inquiry to establish a Sixth Amendment violation. Deprivation of the right is ‘complete’ when the defendant is erroneously prevented from being represented by the lawyer he wants, regardless of the quality of the representation he received. To argue otherwise is to confuse the right to counsel of choice—which is the right to a particular lawyer regardless of comparative effectiveness—with the right to effective counsel—which imposes a baseline requirement of competence on whatever lawyer is chosen or appointed.” *Gonzalez-Lopez*, *supra* at ___.

Violation of a defendant's Sixth Amendment right to counsel of choice is a structural error and is not subject to harmless-error analysis. *Id.* at ___.

CHAPTER 4

Criminal Proceedings

Part II—Pretrial Motions and Proceedings (MCR Subchapters 6.000 and 6.100)

4.21 Search and Seizure Issues

D. Where Did the Search Take Place?

7. Searches of Parolees or Probationers

Insert the following text after the July 2006 update to page 338:

See also *United States v Conley*, ___ F3d ___, ___ (CA 6, 2006), where the Sixth Circuit ruled that ordering a probationer—even a probationer convicted of a “white collar” crime—to submit a DNA sample did not require individualized suspicion and did not violate the prohibition against unreasonable searches. According to the Court:

“In view of [the defendant]’s sharply reduced expectation of privacy, and the minimal intrusion required in taking a blood sample for DNA analysis for identification purposes only, the government’s interest in the proper identification of convicted felons outweighs [the defendant’s] privacy interest. Under a totality of the circumstances analysis, the search is reasonable, and does not violate the Fourth Amendment.” *Conley, supra* at ___.

CHAPTER 4

Criminal Proceedings

Part III—Discovery and Required Notices (MCR Subchapter 6.200)

4.26 Discovery

A. Generally

By order issued June 29, 2006, the Michigan Court of Appeals vacated its first opinion in *People v Greenfield* (discussed in the June 2006 update to page 361) and issued an opinion identical to the first with the exception of footnote six (discussed below). In the June 2006 update to page 361, change the citation to *People v Greenfield (On Reconsideration)*, ___ Mich App ___ (2006), and insert the following language after the existing text:

Note: By order issued June 29, 2006, the Michigan Court of Appeals vacated its first opinion in *People v Greenfield* and issued an opinion identical to the first with the exception of footnote six. In footnote six of its reissued opinion, the Court expressly recognized that MCR 6.201 applies only to felony crimes. Footnote six as it appears in the second *Greenfield* opinion reads as follows (added language appears in bold):

“MCR 6.201 applies to discovery in both the district and circuit courts of this state. See *People v Sheldon*, 234 Mich App 68, 70–71; 592 NW2d 121 (1999); *People v Pruitt*, 229 Mich App 82, 87–88; 580 NW2d 462 (1998). **We recognize that, in Administrative Order 1999-3, our Supreme Court made clear that, contrary to a statement in *Sheldon, supra*, MCR 6.201 applies only to criminal felony cases. While, as a multiple offender, defendant Greenfield was clearly charged with a felony in this case, we reiterate for the bench and bar that MCR 6.201 does not apply to misdemeanor cases.**” *People v Greenfield (On Reconsideration)*, ___ Mich App ___, ___ n 6 (2006).

CHAPTER 4

Criminal Proceedings

Part VI—Sentencing and Post-Sentencing (MCR Subchapters 6.400 and 6.500)

4.58 Sentencing—Sexually Delinquent Person

C. Application

Delete the April 2006 update to page 463 and insert the following text after the first paragraph in this subsection:

**People v Buehler (Buehler I), 268 Mich App 475 (2005), vacated 474 Mich 1081 (2006) (Buehler II).*

In *People v Buehler (On Remand) (Buehler III)*, ___ Mich App ___, ___ (2006), the Court of Appeals determined that the legislative sentencing guidelines would apply to any sentence of imprisonment imposed on the defendant for his conviction of indecent exposure as a sexually delinquent person. The Court further found that under the statutory sentencing guidelines the trial court's sentence of probation would represent a departure for which the court failed to articulate substantial and compelling reasons. However, noting that amendments to MCL 750.335a effective after the Court released its first opinion in this case,* might result in a different outcome for crimes occurring after the amendment's effective date, the Court concluded that MCL 750.335a as it appeared at the time the instant offense was committed controlled its review of the case. Because MCL 750.335a, before it was amended, permitted a court to exercise its discretion and impose a sentence of probation rather than imprisonment, the *Buehler III* Court affirmed its previous ruling that probation was an appropriate penalty for the defendant's conviction. (A more detailed discussion of the case's history appears below.)

Note: 2005 PA 300's amendment to MCL 750.335a may have eliminated a sentencing court's discretion with regard to the penalty imposed for conviction of MCL 750.335a(1). See MCL 750.335a(2)(c). This issue has not yet been addressed.

In *People v Buehler (Buehler II)*, 474 Mich 1081 (2006), the Supreme Court remanded the case to the Court of Appeals to consider whether the trial court's admitted departure (sentencing the defendant to probation rather than prison) was properly justified by substantial and compelling reasons and "whether any term of imprisonment that may be imposed by the circuit court is controlled by the legislative sentencing guidelines or by the indeterminate sentence prescribed by MCL 750.335a." *Buehler II, supra* at ____.

Using the rules of statutory construction, the *Buehler III* Court concluded that the legislative guidelines applied to any sentence of imprisonment imposed on

the defendant because the applicable guidelines statute, MCL 777.16q, was more recently enacted than was the more specific statute, MCL 750.335a. *Buehler III*, *supra* at _____. According to the Court:

“It is a well-settled tenet of statutory construction that when a conflict exists between two statutes, the one that is more specific to the subject matter generally controls. *In re Brown*, 229 Mich App 496, 501; 582 NW2d 530 (1998). However, it is equally well settled that among statutes that are *pari materia*, the more recently enacted law is favored. *People v Ellis*, 224 Mich App 752, 756; 569 NW2d 917 (1997). The rules of statutory construction also provide that inconsistencies in statutes should be reconciled whenever possible. *People v Budnick*, 197 Mich App 21, 24; 494 NW2d 778 (1992).

“Applying these rules to the instant case so as to reconcile the statutes at issue as nearly as possible, we find that even though MCL 750.335a is more specific with respect to the term of imprisonment that may be imposed for a conviction of indecent exposure as a sexually delinquent person, the intent of the Legislature is best expressed in the more recently enacted sentencing guidelines, which are therefore controlling when a trial court elects to impose imprisonment for such a conviction.” *Buehler III*, *supra* at _____ (footnote omitted).

Recognizing that the prospective application of this reasoning to the two statutes as they currently read might result in a different outcome—MCL 750.335a, amended effective February 1, 2006, is more recently enacted than MCL 777.16q—the *Buehler III* Court expressed no opinion about whether the guidelines statute or the statute specific to the offense would apply to future convictions under MCL 750.335a(2). *Buehler III*, *supra* at _____ n 4.

With regard to the conviction at issue in the instant case, MCL 750.335a (at the time the Court first decided this case), specified the term of imprisonment to be imposed for a conviction *if* the court sentenced a defendant to a term of imprisonment. Because the *Buehler I* Court concluded that probation was a proper alternative to imprisonment, the Court did not address the applicability of MCL 777.16q, nor did it address the sentencing court’s departure from the recommended sentence under the guidelines. As directed by the Supreme Court, however, the *Buehler III* Court considered the departure issue and found that the trial court’s reasons for imposing a sentence of probation, rather than the penalty recommended under applicable sentencing guidelines, were not objective and verifiable as required by MCL 769.34(2) and *People v Babcock*, 469 Mich 247, 257–258 (2003). Specifically, the *Buehler III* Court stated:

“[W]e find that the trial court’s stated reasons for sentencing defendant to probation—that defendant was maintaining his sobriety and, in the court’s opinion, possessed the ability to control

his conduct when he was not drinking—are not objective and verifiable. Indeed, whether defendant possesses the ability to control his conduct when not drinking is a subjective determination not external to the minds of the judge, defendant, or others involved in the sentencing decision.” *Buehler III*, *supra* at ____.

Because the *Buehler III* Court decided that this case was governed by the version of MCL 750.335a that gave the sentencing court discretion over whether to sentence the defendant to a term of imprisonment, and because the general probation statute, MCL 767.61a, did not exempt MCL 750.335a from its scope, the *Buehler III* Court reaffirmed the conclusion in *Buehler I* that a sentence of probation under MCL 767.61a was a permissible alternative to the sentence of imprisonment recommended by the sentencing guidelines. Said the *Buehler III* Court:

“Having resolved the questions addressed to us, we nonetheless reaffirm the trial court’s imposition of a probationary sentence for the reasons stated in our prior opinion, which we observe was vacated by our Supreme Court rather than overruled. We do so because we conclude that resolution of these two questions does not call into question our prior analysis of whether defendant’s probationary sentence was a lawful alternative to a prison sentence under the version of MCL 750.335a in effect at the time defendant committed the instant offense.” *Buehler III*, *supra* at ____.

August 2006

Update: Sexual Assault Benchbook

CHAPTER 5

Bond and Discovery

5.14 Discovery in Sexual Assault Cases

B. Discovery Rights

1. Generally

By order issued June 29, 2006, the Michigan Court of Appeals vacated its first opinion in *People v Greenfield* (discussed in the June 2006 update to page 269) and issued an opinion identical to the first with the exception of footnote six (discussed below). In the June 2006 update to page 269, change the citation to *People v Greenfield (On Reconsideration)*, ___ Mich App ___ (2006), and insert the following language after the existing text:

Note: By order issued June 29, 2006, the Michigan Court of Appeals vacated its first opinion in *People v Greenfield* and issued an opinion identical to the first with the exception of footnote six. In footnote six of its reissued opinion, the Court expressly recognized that MCR 6.201 applies only to felony crimes. Footnote six as it appears in the second *Greenfield* opinion reads as follows (added language appears in bold):

“MCR 6.201 applies to discovery in both the district and circuit courts of this state. See *People v Sheldon*, 234 Mich App 68, 70–71; 592 NW2d 121 (1999); *People v Pruitt*, 229 Mich App 82, 87–88; 580 NW2d 462 (1998). **We recognize that, in Administrative Order 1999-3, our Supreme Court made clear that, contrary to a statement in *Sheldon, supra*, MCR 6.201 applies only to criminal felony cases. While, as a multiple offender, defendant Greenfield was clearly charged with a felony in this case, we reiterate for the bench and bar that MCR 6.201 does not apply to misdemeanor cases.**”

People v Greenfield (On Reconsideration), ___ Mich App
___, ___ n 6 (2006).

CHAPTER 7

General Evidence

7.15 Privileged Communications with Care Providers

F. Abrogation of Privileges in Cases Involving Suspected Child Abuse or Neglect

Effective July 6, 2006, 2006 PA 264 amended MCL 722.623 to further specify what members of the social work and social service professions are required to report suspected child abuse or neglect. In the March 2003 update to Section 7.15(F) on page 396, replace the first two paragraphs of subsection (F) and the block quote of MCL 722.623(1) with the following:

“(1) An individual is required to report under this act as follows:

“(a) A physician, dentist, physician’s assistant, registered dental hygienist, medical examiner, nurse, person licensed to provide emergency medical care, audiologist, psychologist, marriage and family therapist, licensed professional counselor, social worker, licensed master’s social worker, licensed bachelor’s social worker, registered social service technician, social service technician, school administrator, school counselor or teacher, law enforcement officer, member of the clergy, or regulated child care provider who has reasonable cause to suspect child abuse or neglect shall make immediately, by telephone or otherwise, an oral report, or cause an oral report to be made, of the suspected child abuse or neglect to the department. Within 72 hours after making the oral report, the reporting person shall file a written report as required in this act.” MCL 722.623(1).

CHAPTER 9

Post-Conviction and Sentencing Matters

9.5 Imposition of Sentence

J. Sex Offenders Registration Act

Effective July 20, 2006, 2006 PA 316 amended MCL 791.240a to require revocation of a sex offender's parole under certain circumstances. Insert the following text on page 471 after the existing paragraph in this subsection:

If an offender required to register under the Sex Offenders Registration Act willfully violates the Act, the parole board must revoke the offender's parole. MCL 791.240a(2).

CHAPTER 11

Sex Offender Identification and Profiling Systems

11.2 Sex Offenders Registration Act

L.* Registration Violation Enforcement; Venue and Penalties

3. Additional Mandatory Penalties

Effective July 20, 2006, 2006 PA 316 amended MCL 791.240a to require revocation of a sex offender's parole under specific circumstances. Insert the following text after the dashed list in sub-subsection (3) on page 528:

See also MCL 791.240a(2), which provides in part:

“If a paroled prisoner who is required to register pursuant to the sex offenders registration act . . . willfully violates that act, the parole board shall revoke the parole.”

*Relettered by the October 2004 update to page 526.

August 2006

Update: Traffic Benchbook— Third Edition, Volume 1

CHAPTER 1

Required Procedures for Civil Infractions

Part A—Introduction

1.3 Jurisdiction and Venue for Traffic Civil Infractions

A. Jurisdiction

Effective July 20, 2006, 2006 PA 298 amended MCL 257.741(2) to remove the reference to the Recorder's Court. Delete the first cross-reference and its corresponding asterisk on page 4.

CHAPTER 1

Required Procedures for Civil Infractions

Part G—Civil Sanctions and Licensing Sanctions

1.20 Civil Fines, Costs, and Assessments for Civil Infractions

A. Civil Fines

2. Mandatory Fines

Effective July 20, 2006, 2006 PA 298 amended MCL 257.907(2) regarding the fines to be assessed for certain specified violations. Replace the last two bullets near the top of page 28 with the following:

- Operating a commercial motor vehicle in violation of an out-of-service order, MCL 257.319f(1). The fine assessed shall be at least \$1,100.00 but not more than \$2,750.00. MCL 257.319f(3).*
- An employer who knowingly allows, permits, authorizes, or requires a driver to operate a commercial motor vehicle in violation of MCL 257.667–257.670, or a federal, state, or local law or regulation pertaining to railroad-highway grade crossings. MCL 257.319g(1)(a). The fine assessed shall not exceed \$10,000.00. MCL 257.319g(2)(a).*
- An employer who knowingly allows, permits, authorizes, or requires a driver to operate a commercial vehicle in violation of an out-of-service order, MCL 257.319g(1)(g). The fine assessed shall be at least \$2,750.00 but not more than \$11,000.00. MCL 257.319g(2)(b).*
- An employer who knowingly allows, permits, authorizes, or requires a driver to operate a commercial motor vehicle in violation of the motor carrier safety regulations. MCL 257.319g(1)(b). The fine assessed shall be at least \$2,750.00 but not more than \$11,000.00. MCL 257.907(2).*

*See MCL 257.319f and 257.907(2), as amended by 2006 PA 298.

*See MCL 257.319g and 257.907(2), as amended.

*See MCL 257.319g, as amended.

*But see MCL 257.319g, as amended—no change was made to (1)(b).

Note: 2006 PA 298 amended MCL 257.319f to specify the civil fine for a violation of MCL 257.319f. MCL 257.319f(3). MCL 257.907(2), as amended by 2006 PA 298 expressly references this change to MCL 257.319f(3). However, other amendments made to MCL 257.907(2) regarding civil fine amounts for specific violations of MCL 257.319g do not accurately reflect the changes made in MCL 257.319g. 2006 PA 298 amended MCL

257.319g(1)(a) and added MCL 257.319g(1)(g). No change was made to MCL 257.319g(1)(b). Therefore, it appears that MCL 257.907(2)'s reference to MCL 257.319g(1)(b) was likely intended to refer to the violation added in MCL 257.319g(1)(g).

- Except as otherwise noted for specific civil infractions under MCL 257.319g* or a substantially corresponding local ordinance, civil infractions that occurred while driving a commercial motor vehicle. The fine shall not exceed \$250.00. MCL 257.907(3).
- For violations of MCL 257.319g not otherwise specified* or a local ordinance substantially corresponding to violations of MCL 257.319g not otherwise specified, the fine shall not exceed \$10,000.00. MCL 257.907(3).

*MCL
257.319g(1)(a),
257.319g(1)(b).

*MCL
257.319g(1)(c),
(1)(d), (1)(e),
and (1)(f).

CHAPTER 1

Required Procedures for Civil Infractions

Part G—Civil Sanctions and Licensing Sanctions

1.24 Reporting Civil Infractions to the Secretary of State

Effective July 20, 2006, 2006 PA 298 amended MCL 257.732(1)(a) to change the number of days within which a court must forward an abstract of the court record to the Secretary of State after finding a defendant responsible for a traffic civil infraction. On page 33 replace the first paragraph in this section with the following text:

After it finds a defendant responsible for a traffic civil infraction, the court must report its finding to the Secretary of State. MCR 4.101(G)(2)(a). Not more than five days after entry of a civil infraction determination or default judgment for violation of the Motor Vehicle Code or a substantially corresponding local ordinance, a municipal judge or court clerk shall prepare and immediately forward to the Secretary of State an abstract of the court record. MCL 257.732(1)(a).

CHAPTER 1

Required Procedures for Civil Infractions

Part G—Civil Sanctions and Licensing Sanctions

1.24 Reporting Civil Infractions to the Secretary of State

Effective July 20, 2006, 2006 PA 298 amended MCL 257.732(3)(d) to remove indorsement classification from the list of information required to be included in an abstract. Replace the quote of MCL 257.732(3)(d) near the top of page 34 with the following:

“(d) The type of vehicle driven at the time of the violation and, if the vehicle is a commercial motor vehicle, that vehicle’s group designation.”

Effective July 20, 2006, 2006 PA 298 amended MCL 257.732(16) to add an additional offense for which the court should not submit an abstract to the Secretary of State. 2006 PA 298 also revised a reference in 257.732(16)(g), a subsection earlier added by 2004 PA 362, effective October 4, 2004. Insert the following text after the first paragraph on page 35:

“(g) A violation described in section 319b(10)(b)(vii)* if, before the court appearance date or date fines are to be paid, the person submits proof to the court that he or she held a valid commercial driver license on the date the citation was issued.

“(h) A violation of section 311* if the person was driving a noncommercial vehicle and, before the court appearance date or the date fines are to be paid, the person submits proof to the court that he or she held a valid driver license on the date the citation was issued.” MCL 257.732(16)(g)–(h).

*MCL 257.319b(10)(b)(vii) governs driving a commercial vehicle without having an operator’s or chauffeur’s license in possession.

*MCL 257.311 governs driving without a license in possession. See Section 3.23 of this volume.

CHAPTER 3

Misdemeanor Traffic Offenses

Part A—Introduction

3.7 Abstracts of Convictions

Effective July 20, 2006, 2006 PA 298 amended MCL 257.732(1)(a) to change the number of days within which a court must forward an abstract of the court record to the Secretary of State. On page 100 replace the first sentence of the first paragraph in this section with the following text and delete the cross-reference corresponding to the first sentence of the paragraph:

Not more than five days after conviction, forfeiture of bail, or entry of a default judgment, the court shall prepare and immediately forward to the Secretary of State an abstract of the court record. MCL 257.732(1)(a).

Effective July 20, 2006, 2006 PA 298 amended MCL 257.732(3)(d) to remove indorsement classification from the list of information required to be included in an abstract. Replace the quote of MCL 257.732(3)(d) near the top of page 101 with the following:

“(d) The type of vehicle driven at the time of the violation and, if the vehicle is a commercial motor vehicle, that vehicle’s group designation.”

CHAPTER 3

Misdemeanor Traffic Offenses

Part A—Introduction

3.10 License Suspensions and Revocations

Effective July 20, 2006, 2006 PA 298 enacted MCL 257.303a to govern situations where more than one state or political entity imposes a license sanction for the same offense. Add the following text after the first full paragraph at the top of page 103:

When more than one entity imposes a license sanction for the same offense, the sanctions are to run concurrently. MCL 257.303a states:

“Except as otherwise provided in this act, the suspension, revocation, denial, disqualification, or cancellation of an operator’s license, chauffeur’s license, or commercial driver license by another state or the United States shall run concurrently with a suspension, revocation, denial, disqualification, or cancellation of an operator’s license, chauffeur’s license, or commercial driver license by this state that is imposed for the same offense.” MCL 257.303a.

CHAPTER 3

Misdemeanor Traffic Offenses

Part C—License and Permit Violations

3.27 Unlawful Use or Display of License

A. Statute

Effective July 20, 2006, 2006 PA 298 amended MCL 257.324(2) to add information about reapplying for a commercial driver license. Add the following text at the end of the quote of MCL 257.324(2) at the top of page 131:

“A person whose commercial driver license application is voided or canceled under this subsection shall not reapply for a commercial driver license for at least 60 days after an application is voided or canceled.”

Update: Traffic Benchbook— Third Edition, Volume 2

CHAPTER 6

Marine Vessels and Personal Watercraft (PWC)

Part A—An Overview of the Marine Safety Act

6.7 Local Ordinances That Regulate Marine Safety

Effective June 26, 2006, 2006 PA 237 amended MCL 324.80110, 324.80111, and 324.80112 to clarify the procedures for enacting special rules and local ordinances that deal with the operation of vessels. Replace the quote of MCL 324.80110 starting at the bottom of page 273 and continuing at the top of page 274 with the following text:

“(1) The [DNR] may initiate investigations and inquiries into the need for special rules for the use of vessels, water skis, water sleds, aquaplanes, surfboards, or other similar contrivances on any of the waters of this state to assure compatibility of uses and to protect public safety. If the [DNR] receives a resolution pursuant to [MCL 324.80112], the [DNR] shall initiate an investigation and inquiry under this subsection.

“(2) The [DNR’s] investigation and inquiry under subsection (1) into whether special rules are needed on a particular water body shall include a consideration of all of the following:

“(a) Whether the activities subject to the proposed special rules pose any issues of safety to life or property.

“(b) The profile of the water body, including local jurisdiction, size, geographic location, and amount of vessel traffic.

“(c) The current and historical depth of the water body, including whether there is an established lake level for the water body.

“(d) Whether any identifiable special problems or conditions exist on the water body for the activities subject to the proposed special rules, such as rocks, pier heads, swimming areas, public access sites, shallow waters, and submerged obstacles.

“(e) Whether the proposed special rules would unreasonably interfere with normal navigational traffic.

“(f) Whether user conflicts exist on the water body.

“(g) Complaints received by local law enforcement agencies regarding activities on the water body.

“(h) The status of any accidents that have occurred on the water body.

“(i) Historical uses of the water body and potential future uses of the water body.

“(j) Whether the water body is public or private.

“(k) Whether existing law adequately regulates the activities subject to the proposed special rules.

“(3) Following completion of the [DNR’s] investigation and inquiry, the [DNR] shall prepare a preliminary report that includes the [DNR’s] evaluation of the items listed in subsection (2) and the [DNR’s] preliminary recommendation as to whether special rules are needed for the water body.

“(4) Upon preparation of the preliminary report, the [DNR] shall provide a copy of the preliminary report to the local political subdivision that has waters subject to its jurisdiction for which the proposed special rules are being considered and shall schedule a public hearing in the vicinity of the water body to gather public input on the preliminary report and the need for special rules. Notice of the public hearing shall be made in a newspaper of general circulation in the area where the water body is located, not less than 10 calendar days before the hearing. At the public hearing, interested persons shall be afforded an opportunity to present their views on the preliminary report and the need for special rules, either orally or in writing.

“(5) Within 90 days following the public hearing under subsection (4), if the [DNR] determines that there is a need for special rules for the water body, the [DNR] shall propose a local ordinance or appropriate changes to a local ordinance. If the [DNR] determines that there is not a need for special rules,

the [DNR] shall notify the political subdivision that has waters subject to its jurisdiction and shall provide the specific reasons for its determination.

“(6) A determination by the [DNR] that there is not a need for special rules for a water body may be appealed to the commission by the political subdivision that has waters subject to its jurisdiction. The commission shall make the final agency decision on the need for special rules for a water body.

“(7) As used in this section, ‘water body’ includes all or a portion of a water body.” MCL 324.80110(1)–(7).

CHAPTER 6

Marine Vessels and Personal Watercraft (PWC)

Part A—An Overview of the Marine Safety Act

6.7 Local Ordinances That Regulate Marine Safety

Effective June 26, 2006, 2006 PA 237 amended MCL 324.80110, 324.80111, and 324.80112 to clarify the procedures for enacting special rules and local ordinances that deal with the operation of vessels. Replace the quote of MCL 324.80111 in the middle of page 274 with the following text:

“A local ordinance proposed pursuant to [MCL 324.80110] shall be submitted to the governing body of the political subdivision in which the water body subject to the proposed special rules is located. Within 60 calendar days, the governing body shall inform the [DNR] that it approves or disapproves of the proposed local ordinance. If the required information is not received within the time specified, the [DNR] shall consider the proposed local ordinance disapproved by the governing body. If the governing body disapproves the proposed local ordinance, or if the 60-day period has elapsed without a reply having been received from the governing body, no further action shall be taken. If the governing body approves the proposed local ordinance, the local ordinance shall be enacted identical in all respects to the local ordinance proposed by the [DNR]. After the local ordinance is enacted, the local ordinance shall be enforced as provided for in [MCL 324.80113].” MCL 324.80111.

Effective June 26, 2006, 2006 PA 237 amended MCL 324.80110, 324.80111, and 324.80112 to clarify the procedures for enacting special rules and local ordinances that deal with the operation of vessels. Replace the quote of MCL 324.80112 on page 274 with the following text:

“Local political subdivisions that believe that special local ordinances of the type authorized by this part are needed on waters subject to their jurisdiction shall inform the [DNR] and request assistance. All such requests shall be in the form of an official resolution approved by a majority of the governing body of the concerned political subdivision following a public hearing on the resolution. Upon receipt of a resolution under this section, the [DNR] shall proceed as required by [MCL 324.80110 and MCL 324.80111].” MCL 324.80112.

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CHAPTER 2

Procedures in Drunk Driving and DWLS Cases

2.10 Licensing Sanctions

Effective July 20, 2006, 2006 PA 298 enacted MCL 257.303a to govern situations where more than one state or political entity imposes a license sanction for the same offense. Add the following text before the **Note** at the top of page 83:

When more than one entity imposes a license sanction for the same offense, the sanctions are to run concurrently. MCL 257.303a states:

“Except as otherwise provided in this act, the suspension, revocation, denial, disqualification, or cancellation of an operator’s license, chauffeur’s license, or commercial driver license by another state or the United States shall run concurrently with a suspension, revocation, denial, disqualification, or cancellation of an operator’s license, chauffeur’s license, or commercial driver license by this state that is imposed for the same offense.” MCL 257.303a.

CHAPTER 2

Procedures in Drunk Driving and DWLS Cases

2.12 Abstract of Conviction Requirements

B. Form of Abstract

Effective July 20, 2006, 2006 PA 298 amended MCL 257.732(3)(d) to remove indorsement classification from the list of information required to be included in an abstract. Replace the quote of MCL 257.732(3)(d) on page 105 with the following:

“(d) The type of vehicle driven at the time of the violation and, if the vehicle is a commercial motor vehicle, that vehicle’s group designation.”

CHAPTER 2

Procedures in Drunk Driving and DWLS Cases

2.12 Abstract of Conviction Requirements

C. Time for Sending Abstracts—Offenses Included in Abstract Requirements

2. Other Vehicle Code Violations

Effective July 20, 2006, 2006 PA 298 amended MCL 257.732(1)(a) to change the number of days within which a court must forward an abstract of the court record to the Secretary of State after finding a defendant responsible for a traffic civil infraction. On page 106 replace the first paragraph and the four corresponding bullet points with the following text:

In other cases where there has been a charge of or citation for violating or attempting to violate the Vehicle Code or a substantially corresponding local ordinance, an abstract must be prepared and forwarded to the Secretary of State not more than five days after:

- A conviction;
- A forfeiture of bail;
- An entry of a civil infraction determination; or
- An entry of a default judgment.

MCL 257.732(1)(a).

Effective July 20, 2006, 2006 PA 298 amended MCL 257.732(16) to add an additional offense for which the court should not submit an abstract to the Secretary of State. 2006 PA 298 also revised a reference in 257.732(16)(g), a subsection earlier added by 2004 PA 362, effective October 4, 2004. Insert the following text after the last bullet point in this section near the middle of page 107:

- Driving a commercial vehicle without an operator's or chauffeur's license under MCL 257.319b(10)(b)(*vii*) if, before the court appearance date or the date fines are to be paid, the person submits proof to the court that he or she had a valid commercial driver license on the date the citation was issued.
- Driving a noncommercial vehicle without an operator's or chauffeur's license under MCL 257.311 if, before the court

appearance date or the date fines are to be paid, the person submits proof to the court that he or she had a valid driver license on the date the citation was issued.

CHAPTER 6

Procedure and Sanctions

6.4 Licensing Sanctions for Felony Traffic Offenses

Effective July 20, 2006, 2006 PA 298 enacted MCL 257.303a to govern situations where more than one state or political entity imposes a license sanction for the same offense. Add the following text before the **Note** near the top of page 175:

When more than one entity imposes a license sanction for the same offense, the sanctions are to run concurrently. MCL 257.303a states:

“Except as otherwise provided in this act, the suspension, revocation, denial, disqualification, or cancellation of an operator’s license, chauffeur’s license, or commercial driver license by another state or the United States shall run concurrently with a suspension, revocation, denial, disqualification, or cancellation of an operator’s license, chauffeur’s license, or commercial driver license by this state that is imposed for the same offense.” MCL 257.303a.